



Public Competition Assessment

16 February 2007

Wesfarmers Limited - proposed acquisition of Linde Gas Pty Limited

Introduction

1. On 19 December 2006, the Australian Competition and Consumer Commission (**ACCC**) announced its decision to not oppose the proposed acquisition of Linde Gas Pty Limited (**Linde Gas**) by Wesfarmers Limited (**Wesfarmers**) (**proposed acquisition**). The ACCC considered that the proposed acquisition would not have the effect, or be likely to have the effect, of substantially lessening competition in the relevant national and state markets for the supply of industrial (including medical), specialty and helium gases in contravention of section 50 of the *Trade Practices Act 1974* (the **TPA**).
2. Linde Gas was being divested pursuant to a section 87B undertaking provided to the ACCC by Linde Gas and its German parent company, Linde AG, on 5 September 2006 (**the undertaking**). Following the ACCC's review of the proposed acquisition, the ACCC also decided, on 17 January 2007, not to object to Wesfarmers Energy Limited (**Wesfarmers Energy**), a wholly owned subsidiary and energy division of Wesfarmers, being the Proposed Purchaser of Linde Gas under the undertaking.
3. The ACCC was of the view, after consideration of the approval test in sub-clause 7.6 of the undertaking, that the proposed acquisition by Wesfarmers Energy would not result or be likely to result in a substantial lessening of competition in a substantial Australian market, being the markets for the supply of industrial (including medical), specialty and helium gases, when compared to the likely competition in those markets in the absence of the sale.
4. The ACCC formed its view on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

Public Competition Assessment

5. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is rejected;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is approved but raises important issues that the ACCC considers should be made public.
6. This Public Competition Assessment has been issued because Wesfarmers Energy's proposed acquisition of Linde Gas was made in compliance with a divestiture requirement of a court enforceable undertaking.
7. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.
8. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
9. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues or the ACCC's analysis of such issues.

The parties

The acquirer – Wesfarmers

10. Wesfarmers is a major diversified Australian public company. Wesfarmers operates business interests in home improvement and building supplies (Bunnings), coal mining, gas processing and distribution, industrial and safety

product distribution, chemicals and fertilisers manufacture, insurance and rail transport. Wesfarmers also has interests in private equity and other activities.

11. Wesfarmers is headquartered in Perth, Western Australia and its operations are currently focussed in Australia and New Zealand. As at 30 June 2005, Wesfarmers had annual operating revenue of \$8.2 billion.
12. Wesfarmers gas and power activities comprise Kleenheat Gas (liquefied petroleum gas (LPG) distribution and marketing), Wesfarmers LPG (LPG production and export), Energy Generation (enGen - power generation for regional areas) and interests in two joint ventures - Air Liquide Western Australia Pty Limited (**ALWA**) and the Kwinana Industrial Gas Joint Venture (the **Kwinana joint venture**).

Air Liquide Western Australia Pty Limited and the Kwinana Industrial Gas Joint Venture

13. ALWA is a joint venture company between Air Liquide Australia (**ALA**) and Wesfarmers established in 1965 to give ALA a local presence in Western Australia and the Northern Territory. ALWA is managed by Wesfarmers Energy.
14. ALWA produces and markets a range of industrial, medical, scientific and atmospheric gases including oxygen, nitrogen, carbon dioxide and argon.
15. ALWA has the following facilities in Australia:
 - An air separation unit (**ASU**) located at Kwinana, Western Australia (with a capacity of 285 tonnes per day (tpd) of oxygen and 400 tpd of nitrogen). The product is distributed either by pipeline to 'tonnage' customers or in bulk form by liquid tanker for delivery direct to the customer, or to the two cylinder filling centres described below.
 - A carbon dioxide plant (120 tpd capacity) also located in Kwinana. The product is either distributed to customers by pipeline or by liquid tanker.
 - Cylinder filling facilities located in Henderson, Western Australia and Darwin. The Henderson facility compresses oxygen, nitrogen, argon and carbon dioxide, and produces dry ice and acetylene. This facility also fills LPG cylinders and distributes other specialty gases which are sourced from other suppliers. The Darwin facility compresses oxygen, nitrogen, argon and carbon dioxide and produces dry ice.
 - An acetylene plant operated from the Henderson cylinder filling facilities. The product is distributed to customers in cylinder form only.

- Branches located at Kalgoorlie and Bunbury. These operations have some distribution capability but no filling capability. They are primarily sales and distribution centres.
16. In December 2002, a separate joint venture between Wesfarmers Energy and ALA was established – the Kwinana joint venture. The Kwinana joint venture, while separate from the ALWA joint venture, is established and operated on the same basis as ALWA.
 17. The Kwinana joint venture is underpinned by a 15 year supply agreement with HIs melt Operations, a company related to Rio Tinto. Pursuant to this long term agreement the Kwinana joint venture supplies up to 880 tpd of oxygen and 800 tpd of nitrogen for the HIs melt operations. This underpinning contract enabled the construction of the ASU located within HIs melt’s pig iron plant. HIs melt is the only customer serviced by this ASU with no excess product available.

The target – Linde Gas Pty Limited

18. Linde Gas was wholly owned by Linde AG, a worldwide industrial gas production and supply company based in Germany, with corporate headquarters in Wiesbaden.
19. Linde Gas wholly owns three subsidiaries in Australia: Lawvale Pty Ltd, Linde Material Handling Pty Limited and Lansing Bagnall (Australia) Pty Limited. Linde Gas commenced operations in Australia in 1975. Linde Gas employs approximately 140 people and its revenue for 2004 was A\$70.5 million.
20. Linde Gas is currently the third-largest supplier of industrial (including medical), speciality and helium gases in Australia, after BOC Limited (BOC) and ALA.
21. Linde Gas’s head office is located in Sydney and it has the following facilities in Australia:
 - A tonnage plant located in the BlueScope Steelworks at Port Kembla, New South Wales. This plant is capable of producing 1250 tpd of oxygen together with a small hydrogen production capacity.
 - Cylinder filling facilities in Sydney, Melbourne, Brisbane and Adelaide.
 - A major speciality gas plant in Sydney.
22. In order to supply its bulk and cylinder businesses, Linde Gas obtains excess gas from its Port Kembla production facility in New South Wales and purchases gas from BOC in the other states.

Other industry participants

23. BOC became part of the Linde Group when Linde AG acquired the BOC Group plc in September 2006. BOC is the largest supplier of industrial (including medical), specialty and helium gases in Australia. BOC's head office is situated in Sydney. As a result of this acquisition, Linde Gas is being sold as discussed in paragraph 26 below.
24. ALA is a subsidiary of the French company Air Liquide, which is currently the leading international company specialising in industrial gases and related services. ALA is the second largest supplier of industrial (including medical), specialty and helium gases in Australia and is present in all Australian states (in Western Australia and the Northern Territory via its 60 per cent share in the ALWA joint venture with Wesfarmers).
25. Supagas Pty Ltd (Supagas) is a small competitor that is present in the cylinder gas market only, and is represented by two individual businesses: SupaGas Victoria – which distributes in Victoria (primarily), South Australia and Tasmania; and SupaGas New South Wales which operates in New South Wales (primarily) and Queensland.

The proposed transaction

26. On 5 September 2006, the ACCC accepted an undertaking pursuant to section 87B of the TPA from Linde AG and Linde Gas to divest Linde Gas in Australia. The undertaking was proffered by Linde AG to the ACCC with regard to Linde AG's acquisition of the BOC Group Plc in order to allay the ACCC's competition concerns in the Australian industrial (including medical), helium and specialty gas markets.
27. On 27 November 2006, Wesfarmers requested informal clearance from the ACCC of its proposed acquisition of Linde Gas. At that time, Wesfarmers did not approach the ACCC as a Proposed Purchaser under the undertaking and the approval provisions in clause 7 of the undertaking were not triggered.
28. After conducting a public assessment of the proposed acquisition, the ACCC decided on 19 December 2006 that the proposed acquisition was unlikely to substantially lessen competition in any relevant market for the purposes of section 50 of the TPA. The ACCC advised Wesfarmers and Linde AG on the same day that it did not propose to intervene in the proposed acquisition.
29. On 20 December 2006, Linde AG notified the ACCC that Wesfarmers Energy was the Proposed Purchaser of Linde Gas under the undertaking. Linde AG also requested that the ACCC confirm that Wesfarmers Energy is an ACCC Approved Purchaser under the undertaking.
30. On 17 January 2007, following further targeted market inquiries, the ACCC advised Linde AG that it did not object to Wesfarmers Energy being the Proposed Purchaser of Linde Gas under the undertaking. Wesfarmers Energy therefore became an Approved Purchaser for the purposes of the undertaking.

Areas of overlap

31. The operations of Wesfarmers (through its interest in ALWA and the Kwinana joint ventures) and Linde Gas are largely similar in terms of their supply of industrial (including medical), helium and specialty gases. However, Wesfarmers only operates in Western Australia and the Northern Territory while Linde Gas has only negligible operations in these regions.

Timing

32. The following table outlines the timeline of key events in this matter.

Date	Event
05-Sep-2006	ACCC accepted section 87B undertaking from Linde AG and Linde Gas to divest Linde Gas.
27-Nov-2006	Wesfarmers sought informal clearance of its proposed acquisition of Linde Gas – ACCC public informal review commenced.
19-Dec-2006	ACCC informed Wesfarmers that the ACCC did not propose to intervene in the proposed acquisition.
20-Dec-2006	Linde AG notified ACCC that Wesfarmers is the Proposed Purchaser under the undertaking and requested ACCC approval.
17-Jan-2007	ACCC advised Linde AG that it had no objection to Wesfarmers Energy being the Proposed Purchaser under the undertaking.

Market inquiries

33. The ACCC conducted market inquiries in relation to the proposed acquisition during the informal review completed on 19 December 2006. The ACCC formed the view that the approval tests to be applied under the undertaking and under the TPA were substantially similar, and there was unlikely to have been any substantial variation to the market conditions in the elapsed period.
34. The ACCC also conducted further targeted market inquiries with a range of industry participants, including competitors, potential competitors, customers (particularly in the west of Australia), and other interested parties. Submissions were sought in relation to the substantive competition issues, including:
- the extent to which Linde Gas currently and in the past competed for tonnage contracts in Western Australia and the Northern Territory, and if not, why not; and

- the extent to which the proposed acquisition was likely to increase the likelihood of coordinated conduct in the markets for tonnage, bulk and cylinder supply of industrial (including medical), helium and specialty gases.

Market definition

35. Market inquiries indicated that the relevant markets had not changed from the markets that the ACCC considered in its recent public assessment of Linde AG's proposed acquisition of the BOC Group plc. Although it should be emphasised that market definitions are determined separately for each proposed transaction, details regarding the relevant markets may be found in the ACCC's Public Competition Assessment of Linde AG's proposed acquisition of the BOC Group plc (the **Linde/BOC PCA**).
36. The relevant markets were considered to be:
- a national market (potentially extending to other countries) for tonnage supply of industrial (including medical) gases;
 - a state-based market for bulk supply of industrial (including medical) gases;
 - a state-based market for cylinder supply of industrial (including medical) gases; and
 - a national market for cylinder supply of helium gas and specialty gases.

Competition analysis

37. Many of the competition issues in the Linde/BOC PCA were still considered relevant in this assessment of the proposed acquisition. That is, that the industrial (including medical), helium and specialty gases industry is highly concentrated, with only a small number of large competitors, no availability of substitute products and in relation the markets for tonnage, bulk and cylinder supply of industrial (including medical) gases, high barriers to entry and little or no import competition. Further details regarding these competition issues may be found in the Linde/BOC PCA. In the current matter, the only areas of overlap between Wesfarmers and Linde were in Western Australia and the Northern Territory, although, as noted in paragraph 31 above, Linde Gas has only negligible operations in these regions. Hence, in addition to the factors considered in the Linde/BOC PCA, the ACCC considered two main competition issues relevant to the proposed acquisition:
- the extent to which Linde Gas currently and in the past competed for tonnage contracts in Western Australia and the Northern Territory (the west of Australia), and if not, why not; and
 - the extent to which the proposed acquisition was likely to increase the likelihood of coordinated conduct in the markets for tonnage, bulk and cylinder supply of industrial (including medical), helium and specialty gases

Issue one – the extent to which competition provided by Linde Gas currently and in the past competed for tonnage contracts in Western Australia and the Northern Territory (the west of Australia), and if not, why not

38. The ACCC's inquiries revealed that Linde Gas was considered only a minor competitive presence in the west of Australia. Inquiries indicated that Linde Gas had a single distributor in the Northern Territory supplying some specialty gases such as helium, and small amounts of the industrial gas argon. However, the ACCC's findings indicated that Linde Gas's market share in the Northern Territory was negligible.
39. There was some speculation in the market that the costs of expanding into this region were prohibitive however no substantial submissions were made regarding this issue. Information before the ACCC led it to consider there were no likely prospects of Linde Gas expanding its competitive presence in the west and north of Australia.
40. There was no evidence to indicate that Linde Gas had been in the past, or was currently, a substantial competitor to the two incumbents (ALWA and BOC) in Western Australia and the Northern Territory. In particular, there was no evidence to indicate that Linde Gas had previously bid for tonnage contracts in Western Australia or the Northern Territory, nor was there evidence that indicated that the mere presence of Linde Gas as the third competitor in industrial gas markets in Australia (particularly Eastern Australia) posed a competitive constraint on BOC or ALWA in the west of Australia.
41. Accordingly, the ACCC considered that the acquisition of Linde Gas by Wesfarmers was unlikely to result in the removal of a real or potential competitor for the supply of industrial and specialty gases in the west of Australia.

Issue two – the extent to which the proposed acquisition was likely to increase the likelihood of coordinated conduct in the markets for tonnage, bulk and cylinder supply of industrial (including medical), helium and specialty gases

42. The ACCC's inquiries revealed that the tonnage, bulk and cylinder industrial gas markets are characterised by conditions conducive to coordinated conduct. That is, all relevant markets have only a small number of large competitors, high barriers to entry, no availability of substitute products and homogenous products. The ACCC was concerned that given the current relationship between Wesfarmers and ALA (through their joint interests in the ALWA joint venture), the proposed acquisition could further increase the likelihood of coordinated conduct between the two parties.
43. However, generally the ACCC's inquiries did not reveal any wide-spread concern about the possibility of the increased likelihood of coordinated conduct. After in-depth consideration of all the evidence and information before it, the ACCC

considered that the likelihood of an increase in the potential to exercise coordinated conduct was not substantial and that, as such, the proposed acquisition was not (on its own) sufficient to lead to, or result in, a likely substantially lessening of competition in the relevant markets. It is noted that the ACCC will continue to monitor the behaviour of competitors in the relevant markets.

Conclusion

44. On the basis of the above, the ACCC formed the view that the proposed acquisition would not result or be likely to result in a substantial lessening of competition in a substantial Australian market, being the markets for the supply of industrial (including medical), specialty and helium gases, when compared to the likely competition in that market in the absence of the sale, in accordance with the approval test in sub-clause 7.6 of the undertaking.